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Case No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983

DELORES DEVINES, et al.,

Petitioners,

v.

HENRY W. MAIER, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court below correctly applied this Court's prior holdings when it concluded that the City of Milwaukee and State of Wisconsin could reasonably condition the continued retention of a

tenant's property right to occupy a rented dwelling unit upon the maintenance of that unit in a habitable state of repair, without being obliged, under the Fifth and Fourteenth Amendments, to pay just compensation to tenants who are ordered out of dwelling units determined to be uninhabitable?

STATEMENT OF THE CASE

The petitioners have not presented the "concise statement of the case" required by the rules of this Court; rather they have presented a statement which offers unsupported conjecture amply spiced with inaccuracies.

While the petitioners would like to characterize the City's actions of placarding an uninhabitable dwelling unit as a summary proceeding, thereby intimating no recourse on the occupant's part, that is hardly the case and the Seventh Circuit recognized that in Devines II. (A-P. p. 120)

Tenants and landlords have a number of opportunities to challenge the placarding action of the City, including obtaining a temporary restraining order challenging the reasonableness of the Building Inspector's actions pursuant to sec. 66.05(3), Wis Stats., or if the Building Inspector is acting under the building and maintenance codes of the Milwaukee Code of Ordinances (hereinafter referred to as "MCO"), i.e., Chapters 12 and 51, MCO, tenants and landlords can petition the Building Maintenance Code Enforcement and Appeals Board for review of the Building Inspector's action. Section 12-11(3), MCO. Tenants also have the option of contesting any forfeiture action brought against them for violation of a vacate order on the ground that the subject structure was not uninhabitable. Section 12-14, MCO.

Under any of the above procedures, a tenant's property right to occupy his rental unit is not terminated, if he chooses to contest the matter, until after the opportunity for a full hearing, meeting all due process requirements. Parratt v. Taylor, 451 U.S. 527 (1981).

As the Seventh Circuit said in Devines II: "[T]he City['s] . . . initial determination of uninhabitability . . . [is] neither final nor binding upon the affected parties and, in effect, serve as nothing more than a starting point for a hearing process that culminates in a full judicial inquiry into the matter. . . ." (A-P. p. 120)

The petitioners then go on to totally mischaracterize the reasons behind the City's placarding actions. They speculate that: "By summarily ordering petitioners to vacate their rented homes, the City seeks to force their landlords to comply

with the city's code by depriving those owners of some part of their rent . . . ." (Petition, p. 9)

The petitioners' assertion could not be further from the truth. Mr. Alex P. LeGrand, the City's Building Inspector through September, 1978, stated that the basis for an order to vacate is " . . . the seriousness of . . . the [code] infractions which have a direct impact upon the health and safety of the people [i.e., the building occupants or invitees] . . . ." (R. 72B at ¶ 6, Tr. p. 16) Without the basic assumption that building conditions would cause an immediate threat to the physical safety of tenants occupying the building, there would be no order to vacate. (R. 72B at ¶ 6, Tr. p. 22) The petitioners themselves must have recognized the inherent danger in dwelling in their rented units because in their complaint (R. 1), none of them contested

the fact that the buildings were uninhabitable.

The petitioners' statement at pp. 10-11 of their Petition concerning the procedural progression of the case is in the main correct. Omitted is the fact that in Devines I, the first Seventh Circuit Court panel did uphold the District Court's dismissal of the petitioners' claims under the Uniform Relocation Act ("URA"), 42 U.S.C. § 4601 et seq. (A-P. p. 147). However, the court in Devines I curiously found that petitioners had a cause of action under the Wisconsin Relocation Act, sec. 32.19, Wis. Stats., even though that act parallels the URA. Because the City acquired no interest in the petitioners' property by its placarding action, a state relocation claim should also have been denied under the same rationale which supported the denial of the URA claim.

(A-P. pp. 148-9). Alexander v. United States Dept. of Housing & Urban Development, 441 U.S. 39 (1979).

An even more glaring omission from the petitioners' characterization of Devines I is the lack of any reference to Judge Thomas Fairchild's concurring opinion; for it was in that concurring opinion that the seeds for Devines II were sown.

In his concurrence, Judge Fairchild observed that: "Where the evidence of uninhabitability is so overwhelming that no reasonable person could conclude to the contrary the mere adjudication of that status by the state does not require compensation." (A-P. p. 150)

Therefore, Judge Fairchild recognized early on that there could be reasonable limitations attaching to the permanent retention of the right to occupy a dwelling unit and that one of those

reasonable limitations was the unit's habitability. Judge Fairchild's only concern seems to have been with whether or not the evidence of uninhabitability was "overwhelming". In Devines II, the Seventh Circuit addressed that issue when it concluded that there were adequate due process mechanisms available to a tenant to challenge the City's initial determination of uninhabitability. (A-P. p. 120)

The petitioners then launch into a complete mischaracterization of the Seventh Circuit's decision in Devines II. This was not just a decision by a different Seventh Circuit Court panel. It was a decision, which prior to issuance, had been circulated to all judges of the Seventh Circuit in regular service. (A-P. p. 102)

Petitioners also misstate the key premise of the intervening case of Texaco v. Short, 454 U.S. 516 (1982), upon which the Seventh Circuit relied in overturning Devines I. Texaco v. Short did not absolve the City from the requirement to pay "just compensation" simply because the petitioners' loss of their property interest was not the City's fault. (Although it is correct to state that the City was not responsible for a unit's uninhabitability.) The primary teaching of Texaco, upon which the Seventh Circuit relied in Devines II, was that the state, which has the power to create a property interest, also has the power " . . . to condition the permanent retention of that property right on the performance of reasonable conditions. . . ." 545 U.S. at 526. The Seventh Circuit followed this Court's pronouncements in Texaco (A-P. p. 113) and concluded that the Wisconsin

Statutes and Milwaukee Ordinances conditioned a renter's property interest in his rental unit upon " . . . the reasonable conditions that the premises remained fit for human habitation during the tenant's period of exclusive possession." (A-P. p. 113)

Therefore, contrary to the petitioners' assertion, this case presents a question of constitutional law which has already been clearly and adequately addressed by this Court, i.e., that a state, in creating a property right, may condition the continued retention of that property right upon the performance of certain reasonable conditions. Hence, this case does not merit further review by this Court.

THE WRIT SHOULD NOT ISSUE BECAUSE DEVINES II IS IN ACCORDANCE WITH PRIOR HOLDINGS OF THIS COURT.

A.

NATURE OF TENANT'S PROPERTY RIGHT

The petitioners, while characterizing their interest in a leasehold as a property right (a generalization with which the respondents would agree), have failed to detail the exact nature of that right as it exists under Wisconsin law.

When such an analysis is undertaken it soon becomes evident why the petitioners could not have harbored any reasonable expectations[1] of a continued right to occupy a dwelling unit which had become uninhabitable.

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[1] Penn Central Transportation Co. v. New York City, 438 U.S. 104, 125 (1978).

The property rights of tenants in their leasehold premises are created and to some extent defined under Chapter 704, Wis. Stats. Section 704.05(3), Wis. Stats., provides in part that: "The tenant cannot use the premises for any unlawful purpose. . . ." The term "unlawful purpose" is not otherwise defined in that statutory section. The duty of repair and restoration to the premises damaged by tenant conduct is also imposed upon tenants pursuant to sec. 704.07(3)(a), Wis. Stats.

The state also specifically limits the value of a property interest in an uninhabitable or untenable rental unit. Pursuant to sec. 703.07(4), Wis. Stats.,

an untenable unit may be in effect worthless[2] if the tenant chooses to remove from the unit.

Thus, while the property interest of a tenant in a leasehold premises is created under Chapter 704, Wis. Stats., that statutory section also imposes certain limitations on the uses to which the tenant can put his leasehold, and imposes certain maintenance obligations upon the tenant. That statutory chapter also recognizes a diminution or complete destruction in the rental unit's value if it becomes untenable. Therefore, it is clear there are statutorily imposed conditions which attach to both the tenant's continued retention of his property rights in a leasehold estate and

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[2] The worthless nature of a renter's interest in an uninhabitable dwelling unit was discussed in detail at pp. 34-37 of respondents' initial brief filed in Devines II.

to the value of his property interest. Certain of those statutory conditions come into play in the facts underlying this litigation.

Under sec. 66.05(1)(a), Wis. Stats., the continued retention of a property interest in a dwelling unit is conditioned upon that dwelling unit not being " . . . so old, dilapidated or . . . so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation. . . ." If any person (i.e., fee owner, tenant or other frequenter or guest) occupies a building which has been determined by the City's Department of Building Inspection and Safety Engineering to be so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation, that person would be subject to a forfeiture action under sec. 66.05(1)(c), Wis. Stats. In essence, continued occupancy of

such a dwelling unit by a tenant would constitute a use for an "unlawful purpose," thereby failing to meet one of the essential conditions attaching to the permanent retention of that property right. Section 704.05(3), Wis. Stats.

Pursuant to sec. 62.17, Wis. Stats., the State of Wisconsin, acting through the agency of its various municipalities, has also placed other conditions, i.e., through enactment of local building codes, upon the right, of both the tenants or landlords, to continued occupancy in any dwelling unit. In Milwaukee's case, these conditions are found in Chapters 12 and 51, MCO.

The rather specific circumstances which would form the basis of a determination by the Department of Building Inspection and Safety Engineering to initiate a placard action under sec. 12-3(6), MCO are set forth in secs. 12-

3(3), (4) and (5), MCO. Failure to vacate the premises in accordance with the placard notice would subject any person, i.e., owner, tenant or frequenter, to a forfeiture action under sec. 12-14, MCO.

Section 12-15 parcels out, as between a landlord and a tenant, the responsibility for making repairs to premises. This parallels secs. 704.07(2) and (3), Wis. Stats. Both the ordinance and the statute make it clear that if a code violation is the result of a tenant's negligence or improper use of the premises, that the tenant, and not the landlord, is responsible for the needed repairs. Hence, a rather interesting and troubling circumstance is established whereby a tenant can be the cause of a code violation leading to a placard action, be responsible for the correction of that violation, but also be the beneficiary of his own illegal acts if the

City is forced to pay the tenant any form of just compensation as a result of the placarding action.

Complementing the building code provisions of Chapter 12, MCO, is Chapter 51, MCO, which establishes various detailed maintenance criteria which must be met in order to continue occupancy of any building in the City of Milwaukee. (Secs. 51-30 to 51-82, MCO) Failure to meet these criteria can lead to the issuance of an order by the Department of Building Inspection and Safety Engineering. Any person, including a tenant, affected by such an order can appeal the order, pursuant to sec. 12-11, MCO, to the Building Maintenance Code Enforcement and Appeals Board pursuant to sec. 12-11, MCO.

Under the criteria established by sec. 12-3(5), MCO, violations of the Chapter 51 housing standards can lead to a placarding action pursuant to which the building is condemned as unfit for human habitation. Failure to comply with a sec. 12-3(5), MCO condemnation order again subjects the owner or tenant to a sec. 12-14 forfeiture action which can be contested.

From the above analysis, it is clear that while Wisconsin law does create a property right for a leasehold interest in a dwelling unit, the state has also conditioned the right to continue occupancy of that unit upon the performance of certain express property maintenance duties, duties which run to both the landlord and the tenant.

B.

NO REASONABLE EXPECTATIONS OF CONTINUED OCCUPANCY IN UNINHABITABLE DWELLING UNIT.

In Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124 (1978), this Court stressed that it had in the past dismissed taking challenges, ". . . on the ground that, while the challenged governmental action caused economic harm, it did not interfere with interests that were sufficiently bound up with the reasonable expectations of the claimant to constitute 'property'. . . ." Given the statutory nature of the tenant's property right in the occupancy of a rented dwelling unit, tenants in Wisconsin cannot be said to have any reasonable expectations of a right to continued occupancy if their residence is determined uninhabitable. A mere unilateral expectation is not a property interest

entitled to protection. Webb's Fabulous Pharmacies v. Beckwith, 449 U.S. 155, 161 (1980).

This Court in Penn Central went on to further observe that when traditional police power concerns of health, safety and morals or general welfare are involved, that land use regulations which have " . . . destroyed or adversely affected recognized real property interests" have survived taking challenges. 438 U.S. at 125. Also see Miller v. Schoene, 276 U.S. 272 (1928) and Mugler v. Kansas, 123 U.S. 623 (1887). This is especially true in the area of the regulation of housing conditions in general and the landlord-tenant relationship in particular. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 440 (1982).

The Mugler case makes the following important distinction between when a police power act may constitute a constitutional taking and when such an act would clearly not constitute a taking. Specifically this Court stated that:

> A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to health, morals or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but it is only a declaration by the State that its use by anyone, for certain forbidden purposes, is prejudicial to the public interests. (Emphasis added.) 123 U.S. at 668.

The Mugler Court went on to distinguish the situation in which just compensation might be required as a result of the use of the police power:

> The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner. 123 U.S. at 669.

Placarding uninhabitable dwelling units is a police power exercise which results in the destruction, or at least the limitation in use, (n.b., tenants must vacate only while their building remains uninhabitable), of a piece of property which has become a public nuisance. It is not the destruction or the removal of a primary expectation which the petitioners can said to have had with respect to the use of their property. The law in Wisconsin is simply too clear on the issue of an individual's inability to continue to occupy an uninhabitable dwelling unit.

Therefore, if the petitioners had no reasonable expectation of an ability to continue to occupy an uninhabitable dwelling unit, even the total destruction of any unreasonable hopes which they may have held is not a taking requiring just compensation.[3]

C.

HABITABILITY IS A REASONABLE CONDITION ATTACHING TO THE RETENTION OF THE RIGHT TO LIVE IN A DWELLING UNIT.

Since it is undisputed that Wisconsin Statutes and the MCO inform anyone and everyone that they can have no reasonable expectation of a continued right to dwell in an uninhabitable structure, the

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[3] See Price v. City of Junction, Texas, 711 F.2d 582, 591 (5th Cir. 1983) in which the Fifth Circuit applied the Penn Central test of reasonable investment backed expectations to inoperable junked vehicles which were destroyed pursuant to a municipal ordinance and found that owners of those vehicles did not have reasonable investment backed expectations in the continued possession of such vehicles.

question which arises and which Devines II addressed is whether, in light of Texaco v. Short, 454 U.S. 516 (1982), the habitability limitations imposed by state and local law are reasonable conditions placed upon the permanent retention of a tenant's property right.

This Court addressed the same issue in Penn Central when it noted that: " . . . a use restriction on real property may constitute a 'taking' if not reasonably necessary to the effectuation of a substantial public purpose. . . ." 438 U.S. at 127.

Therefore, while government admittedly does not have unlimited power to redefine property rights[4] nor the right to by regulation convert property to its

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[4] Loretto v. Teleprompter, 458 U.S. 419, 439 (1982).

own use[5], it does have the right to place reasonable conditions on the continued retention of a property right and view the failure to meet those conditions as an abandonment of the property interest.

In addressing the issue presented by Texaco, the petitioners attempt to stress that the burden of the condition imposed upon the owner of the property right must be "relatively slight" in order to avoid the requirement of paying just compensation.

It is submitted that this characterization misinterprets Texaco. What this Court in Texaco and the Seventh Circuit in Devines II were concerned with was whether or not the conditions attaching to the permanent retention of

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[5] Webb's Fabulous Pharmacies v. Beckwith, 449 U.S. 155, 164 (n.b., no police power justification was offered for the taking in Webb's, 449 U.S. at 163).

the property right were reasonable. 454 U.S. at 526.

It must be remembered that the property rights in Texaco were valuable subsoil mineral rights and therefore it could reasonably be expected that the conditions attaching to their permanent retention would and should be slight. The state should not be in a position to easily deprive owners of such valuable rights. However, the supposed property rights involved here are admitted public nuisances, having little or no value, and any right to continue to retain them should reasonably be conditioned upon the abatement of the nuisance.

Moreover, the public interest served in Texaco, i.e., to clear up uncertainties in titles to property in order to promote land development, is only slight compared to the substantial public interest in preventing the occupancy of structures

which constitute a danger to public health and safety. Hence, the reasonableness of the governmental conditions must also be determined in light of the importance of the public interest served. Penn Central v. New York City, 438 U.S. at 127.

The Seventh Circuit in Devines II made the required Texaco and Penn Central analysis and found that uninhabitability was a reasonable condition to place on the right to continued occupancy of a dwelling unit, i.e., it was a condition reasonably necessary to the effectuation of a substantial public purpose. The Seventh Circuit reasoned that:

> By declaring a dwelling uninhabitable and issuing an order to temporarily vacate, the City of Milwaukee is performing its regulatory duty to protect the health, safety, morals and general welfare of the public. Considering "the character of the action and . . . the nature and extent of the interference with rights," Penn Central Transportation Co. v. New York City, 438 U.S. at 130-31, 98 S.Ct. at 2662-63 it is a manifest injustice and contrary to the best interests of

> society to penalize the City of Milwaukee for properly enforcing its building code, designed in part, to reduce the incidence of substandard housing. (A-P. p. 121-22)

Hence, the Seventh Circuit made the required weighing of public and private interest[6] before determining whether a compensable taking had occurred.

The court's decision in Devines II was also consistent with prior holdings of this Court in which it was determined that governmental activity limiting the use or even destroying property, which poses a danger to health and safety, was not a taking requiring just compensation under the Fifth Amendment. Such property has often itself been considered the offender to the public good. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974); Miller v. Schoene, 276 U.S. 272 (1928).

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[6] Agins v. Tiburon, 447 U.S. 255, 261 (1980).

The petitioners, in fact, never challenge the reasonableness of conditioning continued occupancy in the dwelling unit upon the habitability of the unit. (Petition, p. 21) In effect, their only contention is that the City should have to pay for the right to enforce this admittedly reasonable health and safety restriction on the use of property.[7] The consequences of such an approach are clearly and catastrophically evident. Having to regulate such a basic health and safety issue by purchase[8] would place an undue burden on the already overtaxed resources of every United States municipality and would place in jeopardy the adequacy of enforcing and implementing

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[7] A state has broad power to impose appropriate restriction upon an owner's use of his property. Loretto v. Teleprompter, 458 U.S. at 441.

[8] Andrus v. Allard, 444 U.S. 51, 65 (1979).

such an essential health and safety regulation.

As this Court said in Andrus v. Allard:

> To require compensation in all . . . circumstances would effectively compel the government to regulate by purchase. "Government hardly could go on if to some extent the values incident to property could not be diminished without paying for every change in the general law."
>
> The Takings Clause, therefore, preserves governmental power to regulate, subject only to the dictates of "justice and fairness." 444 U.S. at 65.

Forbidding the occupancy of uninhabitable dwelling units meets the "dictates of justice and fairness" and constitutes part of the price that all must pay for " . . . the advantage of living . . . in a civilized community." Andrus v. Allard, 444 U.S. at 67.

Finally, the enforcement of this condition on a tenant's leasehold is not limited to the City as petitioners

contend. Petitioners themselves have the right to a diminution in rent or a complete release from their rental obligation if their dwelling unit becomes untenable. Section 704.07(4), Wis. Stats. Thus, without any intervention from the City's Building Inspector, tenants can also enforce this reasonable restriction on their leasehold. Hence, the petitioners are incorrect when they state: "No matter what the condition of a residential unit in Milwaukee in fact is, it is not uninhabitable until the City says it is." (Petition, p. 18) In making this assertion the petitioners rely upon the case of Posnanski v. Hood, 46 Wis. 2d 172, 174 N.W.2d 528 (1970). However, a close reading of Posnanski reveals that the tenant's attorney failed to plead as an affirmative defense the provisions of sec. 234.17, Wis. Stats., [now sec. 704.07(4), Wis. Stats.]. 46 Wis. 2d at

176-77. Had that section been pled as a defense, the tenant, without any intervention from the Building Inspector, could unquestionably have introduced evidence as to his unit's untenability (i.e., uninhabitability), thereby either negating or greatly reducing his rental obligation.

Therefore, uninhabitability is a basic and reasonable limitation upon a leasehold property right in Wisconsin; and it is a limitation which can be enforced either by the tenant or by the City as the representative of the societal interest in insuring that the housing stock remains in a habitable state.

CONCLUSION

Based upon the above, it is respectfully submitted that the Seventh Circuit correctly applied past holdings of this Court in its decision in Devines II

and therefore certiorari should not issue to review that decision.

Respectfully submitted,

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EDITOR'S NOTE

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704.05 Rights and duties of landlord and tenant in absence of written agreement to contrary. (1) WHEN SECTION APPLICABLE. So far as applicable, this section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision in writing signed by both the landlord and the tenant. This section applies to any tenancy.

(2) POSSESSION OF TENANT AND ACCESS BY LANDLORD. Until the expiration date specified in the lease, or the termination of a periodic tenancy or tenancy at will, and so long as the tenant is not in default, the tenant has the right to exclusive possession of the premises, except as hereafter provided. The landlord may upon advance notice and at reasonable times inspect the premises, make repairs and show the premises to prospective tenants or purchasers; and if the tenant is absent from the premises and the landlord reasonably believes that entry is necessary to preserve or protect the premises, the landlord may enter without notice and with such force as appears necessary.

(3) USE OF PREMISES, ADDITIONS OR ALTERATIONS BY TENANT. The tenant can make no physical changes in the nature of the premises, including decorating, removing, altering or adding to the structures thereon, without prior consent of the landlord. The tenant cannot use the premises for any unlawful purpose nor in such manner as to interfere unreasonably with use by another occupant of the same building or group of buildings.

(4) TENANT'S FIXTURES. At the termination of the tenancy, the tenant may remove any fixtures installed by him if he either restores the premises to their condition prior to the installation or pays to the landlord the cost of such restoration. Where such fixtures were installed to replace similar fixtures which were part of the premises at the time of the commencement of the tenancy, and the original fixtures cannot be restored the tenant may remove fixtures installed by him only if he replaces them with fixtures at least comparable in condition and value to the original fixtures. The tenant's right to remove fixtures is not lost by an extension or renewal of a lease without reservation of such right to remove. This subsection applies to any fixtures added by the tenant for his convenience as well as those added for purposes of trade, agriculture or business; but this subsection does not govern the rights of parties other than the landlord and tenant.

(5) STORAGE OR DISPOSITION OF PERSONALTY LEFT BY TENANT. (a) Storage, sale or disposition of personalty less than $100 in value. If a tenant removes from the premises and leaves personal property of an apparent total value of less than $100, the landlord may:

1. Store such personalty, with or without notice to the tenant, on or off the premises, with a lien on the personalty for actual cost of removal and storage or, if stored by the landlord, for the reasonable value of storage;

2. Give the tenant notice, personally or by ordinary mail addressed to the tenant at his last-known address, of the landlord's intent to dispose of the personalty by sale or other appropriate means if the property is not repossessed by the tenant within 5 days of such personal service or 8 days of the date of mailing. If the tenant fails to repossess within the time specified, the landlord may proceed to dispose of such property by private or public sale or any other appropriate means. The landlord may deduct from the proceeds of sale any costs of sale and any storage charges if he has first stored the personalty under subd. 1, and send the balance of the proceeds to the tenant by registered mail addressed to his last-known address; if such proceeds are returned to the landlord and are not claimed within 6 months after the date on which the tenant vacated the premises, the proceeds belong to the landlord.

(b) Storage of personalty $100 or more in value. If a tenant removes from the premises and leaves personal property of an apparent total value of $100 or more, the landlord may store such personal property, with or without notice to the tenant, on or off the premises; in such case the landlord has a lien on the property for the actual cost of removal and storage or, if stored by the landlord, for the reasonable value of such storage. This lien can be foreclosed by sale of the property substantially in conformity with s. 409.504, and the landlord shall have the rights and duties of a secured party thereunder. When s. 409.504 is applied to the enforcement of this lien, the word debtor or equivalent, when used therein, shall be deemed to

refer to the tenant and any other person having an interest shown by instrument filed as required by law or shown in the records of the department of transportation, and the word "indebtedness" or equivalent shall include all claims of the landlord for removal, storage, disposition, arranging for the sale and reasonable attorney's fees and legal expenses.

(c) Rights of third persons. The landlord's lien and power to dispose as provided by this subsection apply to any property left on the premises by the tenant, whether owned by him or by others. Such lien has priority over any ownership or security interest and the power to dispose under this subsection applies notwithstanding rights of others existing under any claim of ownership or security interest. If the landlord proceeds under par. (a) 2, notice of intended disposition need be given only to the tenant; if the landlord proceeds under par. (b), notice of intended disposition shall be given as required by s. 409.504. In either event, the tenant or any secured party shall have the right to redeem the property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of the landlord's charges for removal, storage, disposition, arranging for the sale and reasonable attorney's fees and legal expenses.

(d) Other procedure. The remedies of this subsection are not exclusive and shall not prevent the landlord from resorting to any other available judicial procedure.

12-3. Enforcement.

* * *

(3) **ILLEGAL OCCUPANCY AND USE; NONCONFORMING EQUIPMENT.** Whenever any existing building, structure, premises, or equipment, or portions thereof, has been erected, or constructed, or is being occupied or used in violation of any regulation of this code, or of the terms of the permit, or of Section 12-2, the Commissioner of Building Inspection shall serve a written order on the owner of the premises, and on the person using or causing such illegal occupancy and use to discontinue such occupancy and use within not more than thirty (30) days, and the owner of the premises and the person using or causing such illegal occupancy and use shall vacate such building, structure, premises, or equipment, or portions thereof, within the time aforesaid. In all cases involving public safety, such occupancies and use shall be ordered discontinued at once. Such building, structure, premises, or equipment, thereafter shall not again be used or occupied until all of the regulations of this code, the terms of the permit, and of Sections 12-2, applicable thereto, are complied with. Until the provisions of this paragraph are complied with, no

further permits of any kind shall be issued for any alterations or additions to, or occupancy and use of such buildings, structures, and equipment, other than a permit to institute full compliance with the requirements of this paragraph.

(4) **UNSAFE BUILDINGS, STRUCTURES, OR EQUIPMENT.** Whenever the Commissioner of Building Inspection shall find any building, structure, or equipment, or any part thereof, in an unsafe condition because of the insufficiency of stairs, exits, or structural strength thereof, or in danger from fire, due to defects in construction, or because of deterioration, removal of any appliance, device, or equipment required by this code, or because of the hazardous manner in which it is used, or because of any other defects endangering life, limb or property, or because of illegal occupancy or use of any building or structure, he shall serve a written order on the owner of the premises and the persons occupying or using any such building, structure, equipment or premises to discontinue such occupancy or use at once, or as ordered, and thereafter until such defects have been corrected in accordance with the regulations of this code.

(5) DWELLING UNITS CONDEMNED AS UNFIT FOR HUMAN HABITATION.

(a) The Commissioner of Building Inspection shall condemn as unfit for human habitation any dwelling or dwelling unit wherein he finds any of the following defects:

1. One which is so damaged, decayed, dilapidated, insanitary, difficult to heat, unsafe, or vermin infested, that it creates a hazard to the safety or welfare of the occupants or the public; or

2. One which lacks illumination, ventilation, or sanitary facilities adequate to protect the safety or welfare of the occupants or the public; or

3. One which, because of its general condition or location is insanitary or otherwise dangerous to the safety or welfare of the occupants or of the public.

(b) Any dwelling or dwelling unit may be condemned as unfit for human habitation by the Commissioner of Building Inspection if the owner or occupant failed to comply with any order based on the provisions of this code or

any rules or regulations adopted pursuant thereto provided that such dwelling or dwelling unit is, in the opinion of the Commissioner, unfit for human habitation by reason of such failure to comply.

(6) PLACARDING OF BUILDINGS, STRUCTURES, OR EQUIPMENT.

(a) In all cases regulated in Section 12-2(2), (3), (4), and (5), the Commissioner of Building Inspection shall post at each entrance to such building, structure, or equipment, a notice to the effect that said building, structure, or equipment, is unsafe or unfit for human habitation and has been condemned; or that this building or structure is illegally occupied or used and shall be vacated at once as ordered.

(b) Such notice shall remain posted until the required repairs or alterations are made and it shall be unlawful for any person to remove such notice without written permission from the Commissioner of Building Inspection and it shall further be unlawful for any person to occupy or use or enter such building or structure thereafter, except for the purpose of making the required repairs or alterations.

12-11. Building Maintenance Code Enforcement and Appeals Board; The Right to Appeal.

* * *

(3) PETITION FOR HEARINGS, ETC.

(a) Request.

Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter, or of any rule or regulation adopted pursuant thereto may request and shall be granted a hearing on the matter before the Board; provided, that such person shall file in the office of the Board a written petition requesting such hearings and setting forth a statement of the grounds therefor within twenty (20) days after the day the notice was served.

(b) Board to Set Date.

Within ten (10) days of receipt of such petition the Board shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be

heard and to show cause why such notice should be modified or withdrawn. The hearing before the Board shall be commenced not later than thirty (30) days after the date on which the petition was filed; provided, that upon written application of the petitioner to the Board, the Board may postpone the date of the hearing for a reasonable time beyond such thirty (30) day period, if in its judgment the petitioner has submitted a good and sufficient reason for such postponement. Any notice served pursuant to Section 12-4(3) of this chapter shall automatically become an order if a written petition for hearing is not filed in the office of the Board within twenty (20) days after such notice is served. Any license which has been suspended by a notice shall be deemed to be automatically revoked if a petition for hearing is not filed in the office of the Board within twenty (20) days after such notice is served. The Board shall have the power to administer oaths and affirmations in connection with the conduction of any hearing held in accordance

with the provisions of this chapter.

(c) Notification of the Hearing.

If the complainant is known relative to any building code violation for which an appeal is taken to the Building Maintenance Code Enforcement and Appeals Board, that complainant shall be notified by first class U.S. Mail of the time and place of the hearing on that appeal. That notice shall state that the complainant may but is not required to attend this hearing and make his position known. The notice shall be mailed at least five (5) calendar days preceding the date set for the hearing; the day of the hearing is to be included in computing the five-day period. Failure of the complainant to receive the notice or failure of the notice being sent shall not affect the validity or any proceeding held or action taken by the Building Maintenance Code Enforcement and Appeals Board.

12-14. Penalties

Any person, being the owner, or controlling or managing any building or premises or tenant thereof, wherein or whereon there shall be placed or there exists anything in violation of any of the regulations of this code (see also Sections 12-2, 12-3, and 12-4); or who shall build contrary to the plans or specifications submitted to and approved by the Commissioner of Building Inspection; or who shall omit, neglect, or refuse to do any act required in this code, except where special penalty is provided, shall be subject to a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500), together with the cost of the action, and in default of payment thereof to imprisonment in the house of correction or county jail of Milwaukee County, for a period of not less than two days nor more than six months, or until such fine and cost shall be paid; and every person shall be deemed guilty of a separate offense for each day such violation, disobedience, omission, neglect, or refusal shall continue, provided, however, that said accumulated penalties recoverable in any one action shall not exceed the sum of two thousand dollars ($2,000).

12-15. Landlord-Tenant Relations, Evictions, False Information and Penalties.

(1) LANDLORD-TENANT RELATIONS.

This section applies to any tenancy, except as noted in Section 12-16, where there is no contrary provision in writing signed by both parties. Nothing in this section is intended to affect rights and duties under other provisions of the code.

(a) Duty of Landlord.

1. Unless the repair was made necessary by the negligence or improper use of the premises by the tenant, the landlord is under duty to:

a. Keep in reasonable state of repair portions of the premises over which he maintains control;

b. Keep in a reasonable state of repair all equipment under his control necessary to supply services which he has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator or air conditioning;

c. Make all necessary structural repairs;

d. Repair or replace any plumbing, electrical wiring, machinery or equipment furnished with the premises and no longer in reasonable working condition, except as provided in subsection (1)(b)2. below.

2. If the premises are part of a building, other parts of which are occupied by one or more tenants, negligence or use by one tenant does not relieve the landlord from his duty as to the other tenants to make repairs as provided in subsection (1)(a)1. above.

(b) Duty of Tenant.

1. If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in

such case the tenant must reimburse the landlord for reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.

2. The tenant is also under a duty to keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to rent.

(2) EVICTIONS, etc.

No lessor of commercial or residential property shall take retaliatory action toward any lessee who reports building code violations existing on or about the premises by raising rents unreasonably, or by curtailing of services, or by eviction. It shall be a rebuttable presumption that any attempt by the lessor to intitiate any of the aforesaid actions within two (2) months of notification of said violations to the Commissioner of Building Inspection is in violation of this section, except that

nonpayment of rent or commission of waste upon the premises by the lessee shall be a basis for eviction.

(3) FALSE INFORMATION.

It shall be unlawful for any landlord, tenant, or any other individual to submit false information to the Commissioner of Building Inspection relative to code violations supposedly existing on or about any premises in the city of Milwaukee.

(4) PENALTIES.

Any person violating any of the provisions of this section of the code shall be subject to penalties as set forth in Section 12-14.

51-30. Maintenance of Structures, Premises, and Accessory Buildings.

(1) SCOPE.

The provisions of this section shall govern the minimum conditions for maintenance of structures, premises and accessory buildings; the structures, premises, and accessory buildings shall comply with the conditions herein prescribed insofar as they are applicable. (BOCA 300.1).

(2) RESPONSIBILITY.

No person shall occupy as owner-occupant, or let to another for occupancy, any structure, dwelling, dwelling unit, or portion thereof, for the purpose of occupancy therein which does not comply with the following requirements of this code. (BOCA 300.2).

(3) MAINTENANCE OF VACANT STRUCTURES AND LAND.

(a) Clean and Sanitary.

All vacant dwelling units, dwelling structures, principal buildings, accessory buildings, and yards connected thereto shall be maintained in a clean, safe, and sanitary condition.

(b) Exteriors Maintained.

The exteriors of the vacant structures must be mantained in the same manner as if they were occupied so as not to cause a blighting effect on the neighborhood.

(c) Closed; Sanitary.

1. Owner's Responsibility.

The owners shall have the responsibility for maintaining all vacant dwelling units, dwelling structures, principal buildings, accessory buildings, and yards:

a. Free from rubbish or debris or material which might constitute a fire hazard;

b. Free from rodents or vermin or all food or other material which may attract rodents or vermin;

c. All such structures except accessory buildings shall be kept in a locked or closed condition so that they cannot be entered without an unlawful break-in.

2. Notice; Assessment.

If, after reasonable notice, the owner fails to maintain the property in a closed condition or free of material which can constitute a fire hazard or an attraction for rodents or vermin, the Commissioner of Building Inspection may request the Department of Public Works either by city personnel or by contract to correct the situation and charge the cost thereof upon the tax rolls of the property. If, after reasonable notice, the owner fails to keep the property free from rodents or vermin, the Commissioner of Building Inspection may request the Health Department either by city personnel or by contract to correct the situation and charge the cost there upon the tax rolls of the property.

51-31. Premises Condition.

(1) SANITATION.

All exterior property areas and premises shall be maintained in a clean, safe and sanitary condition free from any accumulation of rubbish or garbage. (BOCA 301.1).

(a) Facilities.

1. Rubbish Storage Facilities.

Every multiple dwelling and every dwelling unit located on the premises shall be supplied with adequate rubbish storage facilities whose type and location are approved.

2. Garbage Storage or Disposal Facilities.

Every multiple dwelling and every dwelling unit located on the premises shall be supplied with adequate garbage disposal facilities or garbage storage containers whose type and location are approved. In addition, the provisions of Section 79-4 shall apply to the use of said containers.

3. Adequate Garbage and Rubbish Storage Facilities.

The owner of every dwelling unit shall furnish each dwelling unit with adequate garbage and rubbish storage containers of a type and in a location as described in Sections 79-3 and 79-4 of the code and/or as otherwise approved by the Commissioner of Public Works.

(2) PREMISES, LANDSCAPED, DRAINED, AND GRADED. (BOCA 301.2).

(a) Required Maintenance.

Every premises shall be graded and drained so no stagnant water will accumulate or stand on the premises or within any building or structure located on the premises, and every premises shall be continuously maintained in a sanitary, erosion-free, and dust-free condition by suitable landscaping with grass, trees, shrubs, or other planted ground cover, or by paving with asphalt, concrete, or by such suitable means as shall be approved by the Commissioner of Building Inspection.

(b) Occupant's Responsibility.

Where a premises is occupied or shared by less than two (2) dwelling units, the continued maintenance of the premises in the above conditions shall also be the responsibility of the occupants.

(c) Penalty.

Any person who violates this section shall for each violation forfeit not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(d) Enforcement.

Whenever a premises is not in compliance with subsection (2)(a) above and presents an immediate hazard to public health and welfare, the Commissioner of Building Inspection shall give thirty (30)

days' notice to the owner or owners or the agent of such owners and occupant or tenant of premises in the City of Milwaukee to correct the violation. In the event said violation is not corrected, the Commissioner of Building Inspection shall have the power and hereby is authorized and directed, after the expiration of said thirty (30) days' notice, and, noncompliance therewith, to cause such premises to be landscaped, seeded, and/or sodded, as necessary, by the Department of Public Works, at the expense of the owner. Premises shall be considered hazardous when it becomes a potential source of filth and cause of sickness, when stagnant water or dust is left to accumulate or stand on the premises, or when erosion of the soil causes the same to spill over onto the sidewalk, street, or the adjoining property.

(5) PUBLIC AREAS.

All sidewalks, steps, driveways, parking spaces and similar paved areas for public use shall be kept in a proper state of repair and free of all debris. (BOCA 301.5).

(9) FENCES AND ACCESSORY STRUCTURES.

No owner shall permit any premises to exist or any nondwelling structure or fence to exist on any premises which does not comply with the following requirements: (BOCA 301.9).

(a) Accessory Structures in Good Repair.

Every foundation, exterior wall, roof, window, exterior door, basement hatchway, and every other entrance way of every nondwelling structure shall be maintained as to prevent the structure from becoming a harborage for rats and shall be kept in a reasonably good state of repair.

(b) Exterior Wood Surfaces Painted.

All exterior wood surfaces of all nondwelling structures shall be properly protected from the elements and against decay by paint or other approved protective coating applied in a workmanlike manner.

(c) Fences in Good Repair.

Every fence shall be kept in a reasonably good state of maintenance and repair or shall be removed.

51-32. Exterior Structure.

(1) GENERAL.

The exterior of a structure shall be maintained structurally sound and sanitary so as not to pose a threat to the health and safety of the occupants and so as to protect the occupants from the environment. (BOCA 302.1).

(2) STRUCTURAL MEMBERS.

All supporting structural members of all structures shall be kept structurally sound, free of deterioration and maintained capable of safely bearing the dead and live loads imposed upon them. (BOCA 302.2).

(3) ALL EXTERIOR SURFACES. (FOUNDATIONS, EXTERIOR WALLS, ROOFS.).

Every foundation, exterior wall, and roof shall be reasonably weathertight, watertight, rodentproof, and insectproof; and shall be kept in a reasonably good state of maintenance and repair.

(a) Wooden Surfaces Protected.

All exterior wood surfaces shall be reasonably protected from the elements and against decay, by paint or other approved protective coating applied in a workmanlike fashion.

(b) Ferrous Metal Surfaces Protected.

All ferrous metal surfaces shall be properly surface coated when required to prevent deterioration.

(d) All cornices, entablatures, belt courses, corbels, terracotta trim, wall facings, and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition. (BOCA 302.3, 4.).

(e) Signs, Marquees, and Awnings.

All canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts and similar overhang extensions shall be maintained in good repair and be properly anchored so as to be kept in a safe and sound condition. They shall be protected

from the elements and against decay and rust by the periodic application of a weather-coating material such as paint or other protective treatment. (BOCA 302.3, 5.).

(f) Chimneys and Supplied Smoke Pipes.

Every chimney and every supplied smoke pipe shall be adequately supported, reasonably clean, and maintained in a reasonably good state of repair.

(g) Stairways and Porches.

Every inside and outside stairway, every porch, and every appurtenance thereto shall be constructed as to be reasonably safe to use and capable of supporting the load that normal use may cause to be placed thereon; and shall be kept in sound condition and in a reasonably good state of maintenance and repair. (BOCA 302.3, 7.).

(h) Stairways, Exits, and Handrails.

Every exit from every dwelling shall comply with the following requirements:

1. It should be kept in a reasonably good state of repair;

2. It shall be unobstructed at all times;

3. All exit stairways of more than three (3) risers shall have at least one (1) handrail and all stairways

which are five (5) feet or more in width, or which are open on both sides, shall have a handrail on each side. Stairways which are less than five (5) feet in width shall have a handrail on the lefthand side as one mounts the stairs on the open side, if any; and

4. All handrails shall not be less than thirty (30) inches vertically above the nose of the stair treads and not less than forty-two (42) inches above stairway platforms.

(4) WINDOWS, DOORS, AND BASEMENT HATCHWAYS.

(a) In Good Repair.

Every window, exterior door, and basement hatchway shall be reasonably weathertight and rodentproof; and shall be kept in reasonably good working condition and a reasonably good state of maintenance and repair.

(b) Openable Windows.

Every window, other than a fixed window, shall be capable of being easily opened and shall be held in position by window hardware.

(d) Insect Screens.

Every window required for ventilation including bath and toilet rooms shall be supplied with approved screening covering 33 1/3% of window area, except that such screens shall not be required for window areas above the fifth floor.

1. Screens for Basement Windows.

Every dwelling having two (2) or more basement windows shall have at least two (2) window screens which cover the entire window. Where there is only one basement window, it shall be similarly screened. Such screens shall have a wire mesh of not less than number 16.

(e) Door Hardware.

Every exterior door, door hinge, and door latch shall be maintained in good condition. Door locks in dwelling units shall be in good repair and capable of tightly securing the door. (BOCA 302.4, 5).

(5) ROOFS. (RAINWATER DRAINAGE).

All water shall be conveyed and drained from every roof so as not to cause dampness or damage to the exterior or interior of the structure. Such water shall be drained and directed in a manner which will in no way damage the adjoining premises.

(6) ROOF GUTTERS AND CONDUCTORS REQUIRED.

Except for private detached accessory buildings not more than one thousand (1,000) square feet in area, all roofs of all buildings and structures shall be provided with approved-type gutters and conductors. Such gutters and conductors shall be properly installed and maintained in good repair at all times.

51-33. Interior Structure.

(1) GENERAL.

The interior of a structure and its equipment shall be maintained structurally sound and in a sanitary condition so as not to pose a threat to the health and safety of the occupants and protect the occupants from the environment. (BOCA 303.1)

(2) STRUCTURAL MEMBERS.

The supporting structural members of every building shall be maintained structurally sound, not showing any evidence of deterioration which would render them incapable of carrying the imposed loads. (BOCA 303.2).

(3) INTERIOR SURFACES.

(a) To be Clean.

Every interior partition, wall, floor, and ceiling shall be capable of affording privacy, kept in a reasonably good state of repair, and maintained so as to permit them to be kept in a clean and sanitary condition.

(b) Bathroom and Kitchen Floors.

Every toilet, bathroom and kitchen floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition. (BOCA 303.3, 2.).

(4) FREE FROM DAMPNESS.

In every building, cellars, basements and crawl spaces shall be maintained reasonably free from dampness to prevent conditions conducive to decay or deterioration of the structure. (BOCA 303.4).

(5) SANITATION.

(a) Required.

The interior of every structure shall be maintained in a clean and sanitary condition free from any accumulation of rubbish, refuse or garbage. Rubbish, garbage, and other refuse shall be properly kept inside temporary storage facilities as required. (BOCA 303.5).

(b) Storage.

Garbage or refuse shall not be allowed to accumulate or be stored in public halls or stairways. (BOCA 303.5, 1.).

(6) INSECT AND RODENT HARBORAGE.

All structures shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation. (BOCA 303.6.).

(8) EXIT FACILITIES.

All interior stairs and railings and other exit facilities of every structure shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or are broken, warped or loose. Every inside stair shall be so constructed and maintained as to be safe to use and capable of supporting the anticipated loads. (BOCA 303.8, 1.).

51-40. Light, Ventilation and Space Requirements.

(1) SCOPE.

The provisions of this article shall govern the minimum conditions and standards for the light, ventilation and space for the occupancy of a structure. All light, ventilation and space conditions shall comply with the requirements herein prescribed insofar as they are applicable. (BOCA 400.1.).

(2) RESPONSIBILITY.

The owner of the structure shall provide and maintain such light and ventilation and space conditions in compliance with these requirements. A person shall not occupy as owner-occupant or let to another for occupancy or use any premises which does not comply with the following requirements of this article. (BOCA 400.2.).

(4) OPEN SPACE.

An open space when used for the origin of light and ventilation shall be maintained unobstructed. (BOCA 400.4.).

51-41. Light.

(1) GENERAL.

All spaces or rooms shall be provided sufficient light so as not to endanger health and safety. (BOCA 401.1.).

(2) REQUIRED WINDOW AREA.

Every habitable room shall have at least one window facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be at least eight percent (8%) of the floor area of such room. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of the skylight shall equal at least fifteen percent (15%) of the total floor area of such room. Skylight-type windows existing on the effective date of this ordinance (December 6, 1968) may, if less than fifteen percent (15%) of the total floor area be increased to fifteen percent (15%) but no skylight-type window shall be installed in lieu of a window where a skylight has not previously existed.

(3) LIGHTING OF COMMON HALLS AND STAIRWAYS.

(a) Two or More Family Dwellings.

Public pathways and stairways in buildings accommodating two (2), three (3), or four (4) families shall be provided with convenient light switches controlling an adequate lighting system which may be turned on when needed. An emergency circuit is not required for this lighting.

(b) Four or More Families.

Public pathways and stairways in buildings accommodating more than four (4) families, or thirty (30) persons, and in every building which accommodates transients shall be lighted at all times with adequate artificial lighting; except, that such artificial lighting may be omitted from sunrise to sunset where adequate natural lighting is provided. Whenever the occupancy of the building exceeds one hundred (100) persons, the artificial lighting as regulated herein shall be on an emergency circuit.

(c) Intensity of Light.

1. Adequate lighting system, as herein required, shall mean an intensity of two and one-half (2 1/2) foot candles at a plane thirty (30) inches above the floor line.

2. The required intensity shall apply to both natural and artificial lighting.

(4) OTHER SPACES.

All other spaces shall be provided with natural or artificial light of sufficient intensity and so distributed as to permit the maintenance of sanitary conditions, and the safe use of the space and the appliances, equipment and fixtures. (BOCA 401.4.).

51-42. Ventilation.

(1) GENERAL

All spaces or rooms shall be provided sufficient natural or mechanical ventilation so as not to endanger health and safety. Where mechanical ventilation is provided in lieu of the natural ventilation, such mechanical ventilating system shall be maintained in operation during the occupancy of any structure or portion thereof. (BOCA 402.1.).

(2) ADEQUATE VENTILATION REQUIRED.

Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total openable window area in every habitable room shall be equal to at least fifty percent (50%) of the minimum window area size or minimum skylight-type size, as required in Section 51-41(2) except where there is supplied some other device affording adequate ventilation.

(3) LIGHT AND VENTILATION REQUIREMENTS FOR BATHROOMS AND TOILET ROOMS.

Every bathroom and toilet room shall comply with the light and ventilation requirements for habitable rooms contained in Sections 51-41(2) and 51-42(2) except that no windows or skylights shall be required in adequately ventilated bathrooms and toilet rooms equipped with an adequate mechanical ventilation system. (BOCA 402.3.).

51-43. Dwelling Unit Limitations.

(1) SEPARATION OF UNITS.

Dwelling units shall be separate and apart from each other. Sleeping rooms shall not be used as the only means of access to other sleeping rooms or habitable spaces. (BOCA 403.1.).

(2) BASEMENT ROOMS.

Basement rooms used for living purposes shall comply with Chapter 34 and Chapter 37 of the Milwaukee Code.

51-44. Space Requirements.

(1) MINIMUM AREA FOR DWELLING UNIT HAVING ONE HABITABLE ROOM.

Every dwelling unit containing one habitable room shall have a minimum floor area of one hundred and fifty (150) square feet when occupied by one person and an additional one hundred (100) square feet for each additional occupant. Any dwelling unit created in accordance with the provisions of the Milwaukee Code prior

to October 20, 1971, shall not contain less than one hundred and twenty (120) square feet of habitable room floor area for one person or not less than one hundred and seventy (170) square feet of habitable room floor area if occupied by more than one occupant. The maximum occupancy for a one (1) room dwelling unit shall be two (2) people.

(2) MAXIMUM OCCCUPANCY FOR DWELLING UNITS OF TWO (2) OR MORE ROOMS.

No dwelling unit consisting of two (2) or more rooms shall be occupied by more occupants than the total number which is calculated on the following basis:

TYPE OF ROOM	OCCUPANCY SUBTOTAL
1. Kitchen	0
2. Each habitable room containing less than seventy (70) square feet of floor area	0
3. Each habitable room containing at least seventy (70) but less than one-hundred (100) square feet of floor area	1
4. Each habitable room containing one-hundred (100) or more square feet of floor area	2

(4) SLEEPING IN KITCHENS OR HALLWAYS PROHIBITED.

It shall be prohibited to use for sleeping purposes any kitchen, nonhabitable space, or public space. (BOCA 404.4.).

(5) RESTRICTED USES.

(a) Minimum Ceiling Height.

At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven (7) feet; and the floor area of that part of any room where the ceiling height is less than five (5) feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(b) Creation of Dwelling Unit Sharing a Toilet and a Bath.

No dwelling unit may be permitted where occupants share a toilet, or a bath, or a lavatory basin with the occupants of another dwelling unit or other dwelling units, in accordance with the provisions of Section 51-51(1)(a)2, (1)(b)2, and (1)(c)2 unless such unit has been created in accordance with the provisions of the Milwaukee Code applicable at the time of its creation, and unless every such dwelling is located in a second class dwelling for which a valid second class dwelling permit was issued in accordance with the provisions of Section 51-19(3) of the Code and in effect on October 20, 1971.

51-50. Plumbing Facilities and Fixture Requirements.

(1) SCOPE.

The provisions of this chapter shall govern the minimum plumbing facilities and fixtures to be provided.

All plumbing facilities and fixtures shall comply with the requirements herein prescribed insofar as they are applicable. (BOCA 500.1.).

(2) RESPONSIBILITY.

The owner of the structure shall provide and maintain such plumbing facilities and fixtures in compliance with these requirements. A person shall not occupy as owner-occupant or let to another for ocupancy or use any structure of portion thereof or premise which does not comply with the following requirements of this article. (BOCA 500.2.).

51-51. Required Facilities.

(1) PLUMBING FACILITIES REQUIRED.

Every occupant of every dwelling shall have unrestricted access to a kitchen sink, toilet, bath, and lavatory basin required in accordance with the provisions of this section.

(a) Toilet Required.

1. Basic Requirement.

Every dwelling unit shall contain a toilet, except as otherwise permitted in subsection (1)(a)2 below.

2. Sharing a Toilet.

The occupants of two (2) or more second class dwelling units may share a toilet if the total number of occupants sharing a single toilet does not exceed eight (8).

(b) Lavatory Basin Required.

1. Basic Requirement.

When existing dwelling units are remodeled to include any change in floor plans or there are additions thereto, each unit, except as otherwise specified under subsection (1)(b)2 below shall contain a lavatory basin within the room in which the required toilet is located.

2. Sharing a Lavatory Basin.

Every second class dwelling shall contain a lavatory basin or lavatory basins within the room or rooms in which the communal toilet or toilets are located and the total number of lavatory basins shall not be less than the number of toilets.

(c) Bath Required.

1. Basic Requirement.

Every dwelling unit shall contain a bath, except as otherwise permitted in subsection (1)(c)2 below.

2. Sharing a Bath.

The occupants of every second class dwelling unit shall have access to a bath located within the second class dwelling unit occupied by them or the occupants to two (2) or more second class dwelling units may share a bath, provided the total number of occupants in the two (2) or more second class dwelling units sharing a single bath does not exceed eight (8).

(d) Kitchen Sink Required.

Every dwelling unit shall contain an approved kitchen sink.

51-52. Toilet Rooms.

(1) PRIVACY IN A ROOM CONTAINING TOILET AND BATH.

Every toilet and every bath shall be contained within a room or within separate rooms which afford privacy to a person within said room or rooms. (BOCA 502.1.).

(2) DIRECT ACCESS.

Toilet rooms and bathrooms shall not be used as a passageway to a hall or other space, or to the exterior. A toilet room or bathroom in a dwelling unit shall be accessible from any sleeping room without passing through another sleeping room. (BOCA 502.2.).

(3) LOCATION OF COMMUNAL TOILETS AND BATHS.

Every communal toilet and bath, required to be provided in accordance with provisions of Section 51-51(1)(b)2 and (1)(c)2 shall be located within a room or rooms accessible to the occupants of each dwelling unit sharing such facilities without going through a dwelling unit of another occupant and without going outside of the dwelling, and said room or rooms shall be located on the same floor of the dwelling as, or on the floor immediately above or immediately below, the dwelling units whose occupants share the use of such facilities.

51-53. Plumbing Fixtures.

(1) GENERAL.

All plumbing fixtures shall be maintained in a safe and useable condition. All plumbing fixtures shall be of approved material. (BOCA 503.1.).

(2) MAINTENANCE OF SUPPLIED PLUMBING FIXTURES.

Every supplied plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary, working condition.

(4) ACCESS FOR CLEANING.

Plumbing fixtures shall be installed as to permit easy access for cleaning both the fixture and the area about it. (BOCA 503.4.).

51-54. Water System.

(1) GENERAL.

Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other facility shall be properly connected to an approved water system. All sinks, lavatories, bathtubs and showers shall be supplied with hot and cold running water. (BOCA 504.1.).

(3) SUPPLY.

The water supply systems shall be installed and maintained to provide at all times a supply of water to plumbing fixtures, devices, and appurtenances in sufficient volume and at pressures

adequate to enable them to function satisfactorily. (BOCA 504.3.).

(4) HOT WATER HEATING FACILITY.

Every supplied hot water heating facility shall be properly connected with the hot water lines required under the provisions of this chapter and shall be capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every kitchen sink, bath, and lavatory basin required under the provisions of this chapter, at a temperature of not less than one-hundred twenty (120) degrees F. (BOCA 504.4.).

51-55. Sewage System.

(1) GENERAL.

Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other facility shall be properly connected to either a public sewer system or to an approved private sewage disposal system. (BOCA 505.1.).

(2) MAINTENANCE.

Every plumbing stack, waste and sewer line shall be so installed and maintained as to function properly and shall be kept free from obstructions, leaks, and defects to prevent structural deterioration or health hazards. All repairs and installations shall be made in accordance with the provisions of the Milwaukee Code. (BOCA 505.2.).

51-60. Mechanical and Electrical Requirements.

(1) SCOPE.

The provisions of this article shall govern the minimum mechanical and electrical facilities and equipment to be provided. All mechanical and electrical facilities and equipment shall comply with the requirements herein described insofar as they are applicable. (BOCA 600.1.).

(2) RESPONSIBILITY.

The owner of the structure shall provide and maintain such mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or let to another for occupancy or use any premises which do not comply with the following requirements of this article. (BOCA 600.2.).

51-61. Heating Facilities.

(1) HEATING FACILITIES SUPPLIED.

(a) Whenever a dwelling unit has supplied heating facilities, said facilities shall be properly installed, be maintained in reasonably good working condition and be capable of adequately heating all habitable rooms, bathrooms, and toilet rooms contained therein, or intended for use by the occupants thereof, to a temperature of at least sixty-seven degrees (67°) Fahrenheit at a distance of three (3) feet above floor level, when the outdoor temperature is at or above ten degrees (10°) below zero Fahrenheit.

(b) Supplied Heat.

Every owner or operator who rents, leases, or lets any dwelling unit on terms, either express or implied, to supply heat to the occupants thereof, shall maintain a minimum temperature of sixty-seven degrees (67°) Fahrenheit continuously during periods of occupancy.

(c) Owner's Responsibility.

Whenever a dwelling is heated by means of a furnace, boiler, or other heating apparatus under the control of the owner or operator of the dwelling, such owner or operator, in the absence of a written contract or agreement to the contrary, shall be deemed to have contracted, undertaken or bound himself to furnish heat in accordance with the provisions of this subsection to every dwelling unit which contains radiators, furnace heat duct outlets, or other heating apparatus outlets, and to every communal kitchen, communal dining room, communal bathroom and communal toilet room located within each dwelling.

(2) HEATING FACILITIES NOT SUPPLIED.

Whenever a dwelling unit does not have supplied heating facilities, it shall contain a sufficient number of chimney outlets to permit the occupant, through the use of space heaters furnished by said occupant, to adequately heat all habitable rooms, bathrooms and toilet rooms contained therein or intended for use by the occupants thereof, to a temperature of at least sixty-seven degrees (67°) Fahrenheit, at a distance

three (3) feet above floor level, when the outdoor temperature is at or above ten degrees (10°) zero Fahrenheit.

(a) Central Heating Systems.

Every supplied central heating system shall comply with all of the following requirements:

1. The central heating unit shall be in reasonably good operating condition;

2. Every heat duct, steam pipe, and hot water pipe shall be free of leaks and shall function so that an adequate amount of heat is delivered where intended; and

3. Every seal between the sections of a hot air furnace shall be tight, so noxious gases will not escape into heat ducts.

(b) Space Heaters.

Every owner or tenant installed space heater shall be properly installed, maintained in reasonably good working condition, and shall comply with all of the following requirements:

1. No space heater burning solid, liquid, or gaseous fuels shall be a portable type;

2. Every space heater burning solid, liquid, or gaseous fuels shall be properly vented to a chimney or duct leading to outdoor space;

3. Every coal-burning space heater shall have a fire-resistant panel beneath it;

4. Except as noted in subsection (2)(b)6 below, every space heater located within two (2) feet of a wall shall be equipped with insulation sufficient to prevent the overheating of the wall;

5. Every space heater smoke pipe shall be equipped with guards, properly constructed of nonflammable material at the point where the pipe goes through a wall, ceiling, or partition; and

6. The clearance of automatically controlled gas space heaters to combustible construction shall be as set forth in Section 39-7(18) of the code.

(3) COOKING AND HEATING EQUIPMENT.

All cooking and heating equipment, components, and accessories in every heating, cooking, and water heating device shall be maintained free from leaks and obstructions, and kept functioning properly so as to be free from fire, health, and accident hazards. All installations and repairs shall be made in accordance with the provisions of the building code, or other laws or ordinances applicable thereto. Portable cooking equipment employing flame is prohibited, except for approved residential type food trays or salvers which are heated by a candle or alcohol lamp. (BOCA 601.3.).

(4) INSTALLATION.

All mechanical equipment shall be properly installed and safely maintained in good working condition, and be capable of performing the function for which it was designed and intended. (BOCA 601.4.).

(a) Flue.

All fuel-burning equipment shall be connected to an approved chimney flue or vent. (BOCA 601.4.1.).

(b) Clearances.

All required clearances to combustible materials shall be maintained. (BOCA 601.4.2.).

(c) Safety Controls.

All safety controls for fuel-burning equipment shall be maintained in effective operation. (BOCA 601.4.3.).

(d) Combustion Air.

A supply of air for complete combustion of the fuel and for ventilation of the space shall be provided the fuel-burning equipment. (BOCA 601.4.4.).

(5) FIREPLACES.

Fireplaces, and other construction and devices intended for use similar to a fireplace, shall be stable and structurally safe and connected to approved chimneys. (BOCA 601.5.).

51-62. Electrical Facilities.

(1) ELECTRIC OUTLETS REQUIRED.

Where there is suitable electric service available from supply lines which are not more than three hundred (300) feet away from a dwelling, including all existing dwellings now supplied with electrical service, every kitchen, living room, rooming unit, and hotel unit within such dwelling shall contain at least two (2) separate and remote floor or wall-type electric convenience outlets, or one (1) such convenience outlet and one (1) supplied ceiling or wall-type electric light fixture, and every bedroom, dining room, toilet room, bathroom, laundry room, furnace room, and public hall shall contain at least one (1) supplied ceiling-type or wall-type electric light fixture; provided, that in lieu of one (1) supplied ceiling-type or wall-type electric light fixture, a bedroom and a dining room may each contain at least two (2) separate and remote floor or wall-type electric convenience outlets. Every such outlet and fixture shall be properly installed, shall be maintained in reasonably good working condition, and shall be connected to the source of electric power in a proper manner.

(2) INSTALLATION.

All electrical equipment, wiring, and appliances shall be installed and maintained in a safe manner in accordance with all applicable laws. All electrical equipment shall be of an approved type. (BOCA 602.2).

(3) DEFECTIVE SYSTEM.

Where it is found, in the opinion of the Commissioner of Building Inspection that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient outlets, improper wiring or installation, deterioration or damage, or for similar reasons, he shall require the defects to be corrected to eliminate the hazard. (BOCA 602.3).

51-80. Responsibility of Persons.

Responsibility of Owners, Operators, and Occupants.

The provisions of Sections 51-81 and 51-82 shall govern the responsibility of persons for the maintenance of structures, equipment and premises thereof. (BOCA 800.1)

51-81. Sanitary Conditions.

(1) CLEANLINESS.

(a) Occupant's Responsibility.

Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies or controls, and prior to moving, vacating, or relinquishing occupancy or control. Every occupant of a dwelling or dwelling unit shall properly dispose of all garbage and rubbish, in accordance with the requirements of this code.

(b) Owner's Responsibility.

Every owner of a dwelling containing two (2) or more dwelling units and every owner of a premises where two (2) or more dwelling units share the same premises shall be responsible for maintaining in a clean and sanitary condition all communal, shared, or public areas of the dwelling and premises thereof which are used or shared by the occupants of two (2) or more dwelling units.

In any rental dwelling or rental dwelling unit, storm windows shall be supplied to the tenant for each window in each habitable room of the rental dwelling or rental dwelling unit upon occupancy except that storm windows need not be provided hereunder if heat in the rental dwelling or rental dwelling unit is supplied by the owner or if heat in the rental dwelling or rental dwelling unit may be reasonably maintained at a temperature of sixty-seven degrees (67°) Fahrenheit within such rental dwelling or rental dwelling unit. These storm windows shall cover the entire window surface and be capable of adequately sealing out cold air and be constructed of rigid, clear material. The responsibility of installing the storm windows shall be assumed by the tenant.

(11) BASEMENT DOOR LOCKS SUPPLIED BY OWNER.

Every owner of a multifamily dwelling containing three (3) or more units shall install locks on basement and cellar utility and laundry room doors of said dwelling and provide keys for all tenants.

(12) USE BY OCCUPANT OF SUPPLIED HEATING FACILITIES.

Every occupant of a dwelling unit shall be responsible for the exercise of reasonable care, proper use, and proper operation of supplied heating facilities.

(13) REQUIRED SERVICES, FACILITIES, EQUIPMENT OR UTILITIES NOT TO BE DISCONTINUED.

(a) Required Services Must Be Maintained.

No owner or operator shall cause any service, facility, equipment or utility which is required or supplied to be removed from or shut off from, or discontinued for any occupied dwelling or dwelling unit let or occupied by him, except for such temporary interruption as may be necessary while actual repairs, replacements, or alterations are being made.

(b) Required Services for Rental Units.

See Section 51-30 for regulations governing the maintenance of essential services in residential rental premises.

(14) DESTRUCTION, MUTILATION, OR DEFACING OF PROPERTY.

No person shall willfully or wantonly damage, mutilate, or deface any part of residential real estate, supplied fixtures and equipment, and supplied furnishings or any other property of another.

51-82. Extermination.

(1) OWNER.

The owner of any structure shall be responsible for extermination within the structure prior to renting, leasing, or selling the structure. (BOCA 802.1).

(2) EXTERMINATION OF PESTS.

(a) Owner's Responsibility.

Every owner of a dwelling containing two (2) or more dwelling units shall be responsible for the extermination of insects, rodents, or other pests on the premises. Whenever infestation exists in two (2) or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two (2) or more dwelling units, extermination thereof shall be the responsibility of the owner.

(b) Tenant-Occupant's Responsibility.

Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises; and every occupant of a dwelling unit in a

dwelling containing more than one (1) dwelling unit shall be responsible for such extermination within the unit occupied by him whenever his dwelling unit is the only one infested. Notwithstanding the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a reasonably rodentproof or reasonably insect proof condition, extermination shall be the responsibility of the owner.